IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 70 OF 1996.

Union of India.
Represented by the Executive Engineer,
Goa Central Division, Central
Public Works Department,Bambolim, Goa ..... Appellant.

Versus

M/s. S.N. Associates & Builders (Pvt.) Ltd.
Mukund, Gr. Floor, Opp. Vidhya Bhavan,
Comba, Margao, Goa. ..... Respondents.

Shri V. P. Thali, Senior Central Government Standing Counsel for the Appellant.

Shri C. Mascarenhas, Advocate for the Respondents.

Coram: N.A. Britto, J.

Date of Reserving the Judgment: 29.03.2004
Date of Pronouncing the Judgment: 10.06.2004

J U D G M E N T:

This appeal is filed under Section 39 of the Arbitration Act, 1940 (Act , for short) against the Order dated 18.9.95 of the learned Civil Judge, Senior Division at Panaji (Civil Judge, for short) by which the learned Civil Judge, has modified the Award of the Arbitrator dated 31.10.91.

2. Some facts need to be narrated for getting hang of the case and the issues of law raised.

The appellant and the respondent had entered into a contract for the construction of residential quarters for R.I.M. at Margao. The

said contract commenced on 18.4.1983 and the works of the said contractor completed on 12.2.86 and in terms of the said contract the appellants were required to pay the final bill within 7 months of the conclusion of the works i.e. on 11.9.86. Certain disputes and differences having arisen between both the parties in connection with the said construction, the same were referred to arbitration on 9,4,1989 in terms of clause 85 of the contract. The first Arbitrator did not initiate any proceedings but the second entered upon the Reference on 23.8.1991 and made an Award dated 31.10.91.

3. By virtue of the said Award, the respondents were held entitled to Rs.34,855/- (Under Claim No.1), Rs.83,398.82 (Under Claim No.3), Rs.9000/- (Under Claim No.5), Rs.500/- (Under Claim No.6). The claim No.14 pertained to interest claimed by the respondents at the rate of 18% from the date when all claims became due to date for payment.

4. As regards this last claim, the Arbitrator awarded pre-reference interest on Rs.43,855/- at the rate of 12% (for the period from 12.9.86 to 9.4.89 on Claims No.1 and 5 of Rs.34,855/- and Rs.9000/-). The Arbitrator also awarded future interest on the amount of Award from the date of the Award i.e. 31.10.91 to the date of payment or Decree (19.9.95) whichever is earlier, at the rate of 12%. In other words, the Arbitrator did not award pendente lite interest (for the period from 10.4.89 to 30.10.91).

5. After the Award was filed before the learned Civil Judge, and after notices were issued to the parties of the filing of the said Award, the respondents filed an application dated 12.2.92, styling the same as an application under Sections 15, 16, 17 and 29 of the Act. In the said application the respondents prayed for:

(a) Modification of the Award dated 31.10.91 so as to include therein pre-arbitration and pendente lite interest from 31.10.91 on the sum of Rs.1,27,753.82 at the rate of 18%; and

(b) For post-decretal interest at the rate of 18% on the total amount after the modification as was prayed above including costs of arbitration.

6. The learned Civil Judge, proceeded to examine whether the respondents were entitled to pendente lite interest on Claim No.14 by way of modification of the Award dated 31.10.91, and, after relying on the case of G.C. Roy (A.I.R. 1992 S.C., 632) concluded that the Arbitrator had jurisdiction to award pre-reference, pendente lite or (sic and) future interest from 12.9.86 to 31.10.91 on the sum of Rs.1,27,753.82 at the rate of 18% with other costs and as such the Award called for modification.

The grant or refusal to grant interest is generally divided into or spread over the following four periods:

(i) Pre-reference - for the period commencing from the date of dispute till the date the arbitrator enters upon reference;

(ii) Pendente lite –- for the period commencing from the date the arbitrator enters upon the reference till the date of making the Award;

(iii) Post-award – For the period commencing from the date of making of the Award till the Award is made the rule of the Court or till payment, whichever is earlier;

(iv) Post-decree – for the period commencing from the date of decree till the date of payment.

The Award of the Arbitrator shows that the Arbitrator granted pre-reference interest at the rate of 12% only and only on the sum of Rs.43,855/- and not on the entire sum of Rs.1,27,753.82. The Award further shows that the Arbitrator did not at all grant pendente lite interest (from 10.4.89 to 30.10.91) on any amount to the respondents. The Award also shows that the Arbitrator granted post-award interest at the rate of 12% (from 31.10.91 to 18.9.95) on the amount of the award.

7. The Order dated 18.9.95 of the learned Civil Judge, shows that the Award has been modified and the rate of interest has been increased from 12% to 18% for pre-arbitration period, not only on the said sum of Rs.43,855/- but on the entire sum of Rs.1,27,753.82 and pendente lite interest which was refused has also been granted on the said total sum of Rs.1,27,753.82 at the rate of 18%.

Arguments have been heard.

Three points arise for my consideration, though the appeal is restricted only to one.

8. There is no dispute now, and nor there could not be any that an Arbitrator has power to grant interest for pre-reference period (vide Abnadutta Jena's case – A.I.R. 1988 S.C., 1520), for pendente lite period (vide G.C. Roy's case – A.I.R. 1992 S.C., 732) and post award period (vide B.N. Agarwalla's case – 1997 (2) S.C.C., 469). There is also no dispute that under Section 29 of the Act the Court can grant interest of post-decretal period.

The learned Civil Judge framed one question i.e. " Whether the claimant was entitled for pendente lite interest pertaining to Claim No.14 as to modify the Award dated 31.10.1991 ", but answered more questions than one and proceeded to enhance the interest awarded by the Arbitrator from 12% to 18% without assigning any reason as to why

he was enhancing the same and that too at a time when the respondents had made a very tall and unrealistic claim that at the relevant time the nationalised banks on their commercial loans were charging interest at the rate of 24% to 30%. The respondents' application dated 12.2.92 filed before the learned Civil Judge did not even show whether the respondents had placed any material before the Arbitrator to prove that the current rate of interest at the relevant time was 18% or 24% to 30% and inspite of that the Arbitrator had declined to award the same.

9. The learned Civil Judge appears to have ignored the basic principles of law relating to arbitration which are well settled by a number of decided cases and it is desirable to reiterate at least some of them. When parties choose their own Arbitrator, they cannot dispute his decision either upon law or on facts when the Award is good on the face of it; and even if an Arbitrator makes mistakes either in law or in fact while deciding the matter referred to him, a Civil Court cannot disturb the Award nor remit the case unless the mistakes are apparent on the face of the award and the documents incorporated in the award. An Arbitrator is under no obligation to give reasons in support of his decision reached by him unless the arbitration agreement is required to give such reasons and if the Arbitrator chooses to give reasons in support of his decision, it is open to the Court to set aside the award if it finds that an error of law has been committed by the Arbitrator on the

basis of the record on going through such reasons. Even in a case where there is an obligation to give reasons in support of the decision reached by him, an Arbitrator is not required to give detailed reasons. An Arbitrator is the final judge of questions both of law and fact and is the sole Judge of the quality as well as quantity of evidence and it is not open to the Court to re-examine and re-appriecate the evidence considered by the Arbitrator to hold that the conclusion reached by the Arbitrator is wrong as the Court does not sit in appeal over the decision of the Arbitrator. In a case where there are two views possible the Court is not justified in interfering with the award by adopting its own interpretation. There is a presumption of validity of award and the objection not taken specifically, must be ignored inasmuch as an objection not taken before the Arbitrator cannot be taken for the first time in Court. Normally, the Court must lean in favour of upholding the award and the jurisdiction of the court is minimal and is circumscribed by the provisions of the Act.

10. The first point which needs consideration is whether the learned Civil Judge was at all justified in enhancing the interest from 12% to 18% ?

11. At the outset it may be stated that the appellants in their memo of appeal have clearly and unequivocally stated that there was no justification for the learned Civil Judge to grant interest at the rate of

18% and that in any case the judgment and decree awarding interest at the rate of 18% and beyond 12% is bad in law and is liable to be set aside. In other words, the appellants have challenged the rate of interest as bad in law only to the extent that it exceeds 12%.

12. On behalf of the respondents, learned Advocate Shri Mascarenhas, contends that a distinction must be made between the nature of pre-reference interest and interest after the date of institution of proceedings. It is submitted that awarding pre-refernce interest is a matter of substantive law, whereas interest pendente lite and post decretal interest is matter of procedural law found in Section 34, C.P.C. and section 29 of the Act, respectively. It is further submitted that as far as pendente lite interest is concerned, there is no doubt that the present case arose out of a commercial transaction between the parties and being so, the Court or the Arbitrator was entirely within his discretion to fix the appropriate rate of interest i.e. rate at which monies are lent by nationalised banks in relation to commercial transactions, and, that it is common knowledge that during the period when the present case was pending before the Arbitrator, such rate was 18%. It has been submitted on behalf of the respondents that in an almost identical case of **Pan Constructions v. State of Goa** (First Appeal No.37/92 decided on 27.7.92), this Court had awarded pendente lite interest at the rate of 18% and likewise in the case of **State of Goa v. K. Hassainer** (Appeal No. 6/95 decided on 18.2.2001), this Court had

upheld the award of the Arbitrator at 18% even for pre-arbitration period, inter alia, by relying on the judgment of the Apex Court in **Paradip Port Trust and others v. Unique Builders** reported in 2001 (1) (Arb.LR. 505 (SC). It is further submitted that the new Arbitration and Conciliation Act, 1996, by virtue of Section 31(7)(b) provides that if an award for payment of money does not mention rate of future interest, the sum shall carry interest at the rate of 18% per annum and therefore the position of law that emerges is that the matter of pendente lite interest is left to the discretion of the Trial Court and the same will not be interfered with unless it could be shown that the discretion has been used perversely or in a patently illegal manner and that no such case has been made out in the present appeal.

13. On the other hand, on behalf of the appellants, Learned Govt. Advocate Shri Thali contends that the learned Civil Judge had no jurisdiction to substitute the discretion of the Arbitrator and increase the rate from 12% as given by the Arbitrator to 18% for the pre-reference period inasmuch no reasons have been given by the learned Civil Judge for increasing the rate of interest. It is submitted on behalf of the appellants that in any event the rate of interest could not be more than the current rate of interest, which was not more than 10% during the relevant period and that, in fact, the Arbitrator by grant of 12% had granted a higher rate which the learned Civil Judge in no case could have increased to 18%.

14. On behalf of the appellants, reliance has been placed on the cases of **U.P. Cooperative Federation Ltd. v. M/s. Three Circles** (2000 (3) Bom. C.R.360, **Oil and Natural Gas Commission v. Macqreqor – Navire Port Equipment & Ors.** (2002 (1) Bom. C.R. 278, **Oil and Natural Gas Corporation v. Essar Steel Ltd.** (2002 (2) Bom. C.R. 79, and **Delcon Engineering v. State of Goa** (Civil Revision Application No. 218/2001).

15. In the case of Pan Constructions (F.A. No.37/92) decided on 27.7.92 the Arbitrator had not awarded pendente lite interest from 4.10.89 to 20.9.1990 without any special reasons and the Division Bench of this Court granted the said interest at the rate of 18% per annum. The judgment does not reflect what was the interest awarded by the Arbitrator for other periods and presumably the Division Bench awarded 18% of pendente lite interest for the said period because the Arbitrator had awarded interest at the same rate for other periods.

16. In the case of **State of Goa v. K. Hassainer** (Appeal No. 6/95 decided on 18.10.01) the appeal filed was dismissed by observing that:- " There can be no dispute about the proposition of law that the award of pre-arbitration interest is covered by Section 3 of the Interest Act, 1978. However, it is nowhere laid down that any particular rate of interest has to be awarded in each and every case. The question of rate

of interest applicable would depend upon the facts of each case. In the case of **U.P. Coop. Federation Ltd.** (2000 (3) Bom. C.R. 360), rate of 10% per year was agreed upon by the parties. Section 3 of the Interest Act, 1978 does not fix any ceiling on the rate of interest to be awarded. In the present case, interest has been awarded under Claim No.11 and the learned Arbitrator has given specific reasons and relied upon specific material in awarding interest of 18%. The said materials are in the form of documents of nationalised banks and therefore relevant for determining rate of interest to be awarded for pre-arbitration period. In the case reported in 2000 (1) Arb. LR 505, the Supreme Court specifically approved the award of interest at the rate of 18% per annum for the pre-arbitration period. At page 18 of the said judgment, the Court held as follows :-

" Unless there appears to be a mistake on the face of the Award and the documents appended or incorporated thereto which forms part of the award it cannot be set aside even with respect to interest part of it. "

17. In the case of **U.P. Cooperative Federation Ltd. v. M/s. Three Circles** (supra) it was observed that:- "The parties are agreed that the maximum rate permitted by the Reserve Bank of India on public deposits during the period 1987-89 was 10% per annum. Thus, the appellants' contention was justified to this extent and we hold that the Arbitrator acted in excess of jurisdiction and contrary to law in awarding

interest in excess of 10% for the period of 1987-89 “. The Court also observed that the Arbitrator has no power to award interest at a rate higher than the current rate of interest, as far as pre-reference period was concerned.

18. In the case of **Oil and Natural Gas Commission v. Macqreqor-Navire Port Equip. & Ors.** (supra) this Court observed that in a case where the contract does not provide for any interest or there is no substantive law awarding interest between the parties and the Interest Act is applicable, interest for pre-reference, reference and post-reference can only be awarded at the current rate of interest. Current rate of interest would be interest as defined in Section 2(b) of the Interest Act. A Division Bench of this Court in the case of pre-reference interest has followed the principle in the case of **U.P. Cooperative Federation Ltd. v. M/s. Three Circles** (supra). The issue of grant of interest is an issue pertaining to jurisdiction of the Arbitrator in awarding interest. The Arbitrator can only award interest which in law he can award. He cannot award interest contrary to the provisions of the Interest Act, 1978. If he so awards the interest as awarded would be an exercise without jurisdiction to the extent of the interest beyond the current rate of interest and, therefore, would be subject to challenge under Section 30 of the Act which even if not pleaded can be considered by the Court in suo motu exercise of power as was """recognized by a Division Bench of this Court in **Union of India v. M/s. Ajit Mehta and Associates** (A.I.R.

1990 Bombay, 45) placing reliance on the judgment of the Apex Court. The Court further observed that as noted in the case of U.P. Coop. Federation Ltd., this Court recognized that the current rate of interest for the period 1987-1989 on public deposits was 10% and the Arbitrator therefore could not have awarded interest of more than 10% and the awarding of interest at the rate of 12.5% therefore had to be set aside and substituted by 10%.

19. In the case of Delcon Engineering (C.R.A. No.218/2001) decided on 11.1.2002 this Court held:

"Our Court has recognized that during the period the current rate of interest was 10% per annum. In the light of that from the date of decree the amount will carry simple interest at the rate of 10% till payment. Considering that the interest is not arising from a commercial transaction but on the ground of damages, interest would be simple interest in terms of the Interest Act, 1978 ".

20. The appellants have not taken in this appeal a plea that the Arbitrator ought to have awarded interest at the rate of 10%. Their plea is that the rate of interest awarded by the learned Arbitrator in any event ought not to be beyond 12%. In other words, the appellants impliedly concede that there was nothing wrong in the Arbitrator awarding interest at 12% per year and in this situation, the appellants

can derive no useful benefit by relying on the judgments relied upon by them, some of which lay down a proposition that the current rate in respect of the periods covered by the said judgments was 10%. In my opinion, the respondents also cannot derive any benefit from the judgments they have referred to in the cases of **Pan Constructions** (supra) and **State of Goa v. K. Hassainer** (supra). In the first case, it is presumably the Arbitrator who had awarded interest at the rate of 18% and following suit, this Court had awarded the same rate in respect of pendente lite period. In the case of **K. Hassainer** also it is the Arbitrator who had awarded interest at the rate of 18% and which got upheld in the process of dismissal of the said appeal. I have already observed that it is not known based on what material the Respondents had claimed interest at 18% before the learned Arbitrator. I have also observed that the respondents had made a tall and unconvincing claim that at the relevant time the nationalised banks were advancing commercial loans at the rate of 24 to 30%. In fact, this claim was made in their written submission dated 13.8.1993 filed before the learned Civil Judge but not in their main application dated 12.2.92 filed for modification of the award. As held by this Court in the case of **State of Goa v. K. Hassainer** (supra) it is nowhere laid down that any particular rate of interest has to be awarded and such rate would depend upon the facts of each case. Again as held by this Court in the case of **State of Goa v. P.B. Nitiyanand** (Appeal No.17/95 decided on 9.6.95):- "Section 3 of the Interest Act does not fix any ceiling on the rate of interest to be

awarded, he is entitled to award reasonable rate of interest. The only prohibition is that he cannot award interest beyond current rate of interest."

21. The contention of the respondents that the transaction was a commercial transaction has got to be rejected. In fact, the interest which was awarded was awarded on damages assessed by the learned Arbitrator. Likewise, the contention of the respondents that the Court or Arbitrator is entirely within its discretion to fix appropriate rate of interest has again got to be rejected because it is the discretion of the Arbitrator to fix reasonable rate of interest and this discretion cannot be substituted by the Court. The submission that the new Arbitration and Conciliation Act, 1996 provides that by virtue of Section 31(7)(b) if an award does not mention any rate of future interest, the same shall carry interest at the rate of 18% per annum is of no assistance to the case of the respondents because the case pertains to an earlier period prior to the said Arbitration and Conciliation Act, 1996 came into force. The learned Arbitrator exercised his discretion looking to the facts of the case and realities of the situation and awarded interest at the rate of 12% which rate he thought fit. In my opinion, the learned Civil Judge was certainly not justified in enhancing the rate of 12% to 18% and that too arbitrarily. The interference in enhancing the said rate by the learned Civil Judge is perverse and illegal. There was no good reason assigned by the respondents to enhance the said rate from 12% to 18%.

It was not even the case of the respondents that they had placed any material before the learned Arbitrator to show that the current rate of interest for the year 1986 or thereabout was 18%. The Hon'ble Supreme Court in the case of **Pradip Port Trust and Ors. v. Unique Builders** (2001 (1) Arb. LR 505) has stated that:-" Unless there appears to be a mistake on the face of the award and the documents appended or incorporated thereto which form part of the award, it cannot be set aside even with respect to interest part of it (emphasis supplied). _ I fully concur with the view expressed by the Rajasthan High Court in the case of **Alim & Co. v. State of Rajasthan** (1998 (4) C.C.C., 10) when it stated that: " It is legally settled that if a Court goes beyond the powers conferred by Section 15 of the Act and makes substantial modification because it takes a different view from that held by the Arbitrator as to what was just and fair in this or that set of circumstances, it acts without jurisdiction. In the case on hand, if learned Court below was of the opinion that the rate of interest awarded by the Arbitrator was excessive, than it could (not) remit the part of the Award under Section 16 of the Act to the Arbitrator, but it had no jurisdiction to modify the Award in an arbitrary manner (bracket supplied)."

22. I am therefore of the view that the learned Civil Judge had no jurisdiction to enhance the interest from 12% to 18% thus modifying the award without any material on record whatsoever. In this view of the matter, the appeal is bound to succeed and the order of the learned Civil

Judge enhancing the interest to 18% deserves to be set aside and the order of the learned Arbitrator in awarding interest at 12% deserves to be restored.

23. The second point for consideration is whether the learned Civil Judge was entitled to award pendente lite interest to the respondents when the learned Arbitrator had declined to award the same. In fact, there is no such point raised by the appellants in the memorandum of appeal. Shri Mascarenhas, learned Advocate for the respondents, submits that the appellants have impugned the judgment/order of the learned Civil Judge only on the question of increased rate of interest from 12% to 18% per year and that the appellants have made no grievance that pendente lite interest could not be awarded by the learned Civil Judge and therefore the argument advanced on behalf of the appellants regarding the grant of pendente lite interest are entirely irrelevant and therefore have got to be ignored.

24. On the other hand, Shri Thali, learned Advocate for the appellants, has made a valiant effort and submitted that a perusal of the grounds of appeal show that it is not correct to say that the appellants have made no grievance that pendente lite interest was not payable and the grievance made by them is as regards lack of jurisdiction of the Civil Court to grant any interest. Alternatively, Shri Thali has contended that in case no such grievance has been made by the appellants, this Court

ought to disallow the said pendente lite interest made payable to the respondents based on the principle in the case of **O.N.G.C. v. Macqreqor Navire Port Equipment** (2002 (1) Bom. CR.278) wherein it is stated that:-

" The issue of grant of interest is an issue pertaining to jurisdiction of the Arbitrator in awarding interest. The Arbitrator can only award interest which in law he can award."

He cannot award interest contrary to the provisions of the Interest Act, 1978. If he so awards the interest as awarded, would be an exercise without jurisdiction to the extent of interest beyond the current rate of interest and, therefore, would be subject to challenge under Section 30 of the Arbitration Act, 1940 which even if not pleaded can be considered by the Court in suo motu exercise of power as was recognised by a Division Bench of this Court in **Union of India v. M/s. Ajit Mehta and Associates** (1989 (3) Bom. C.R. 535) by placing reliance on the judgment of the Apex Court. "

25. Shri Thali, alternatively submits, that a point of law can always be allowed to be raised at the appellate stage and whether the Civil Court had jurisdiction to grant interest for a particular period of law or not, is a pure question of law which can be agitated at the appellate stage.

26. I am not inclined to accept any of three alternate

submissions made by learned Advocate Shri Thali on behalf of the appellants. The memorandum of appeal in para 6 states that:

" 6. The contention of the appellants was that the interest could be awarded for pre-arbitration and pendente lite period to the extent of 12% and not beyond that". In para 10 the appellants have stated that:

" The amount of interest for the period from 12.9.86 to 31.10.91 at 18% per annum on the sum of Rs.1,27,753.82 paise is Rs.118129/- , whereas the same interest at 12% per annum for the said period on the said amount is Rs. 78,752.61 paise and the difference between the two sums is Rs.39,376.40. The value of the appeal for the purpose of jurisdiction is Rs.39,376.40 and hence court fee of Rs.655/- is paid thereon. "

The appellants in para 10(c) have clearly and unequivocally stated thus:-

" © The impugned judgment and decree to the extent it grants interest at 18% be quashed and set aside and be restricted to 12% per annum" .

27. As seen from the memorandum of appeal the valuation done by the appellants does not at all include the additional amount of interest pendente lite awarded by the learned Civil Judge. The appellants have paid no court fee upon the said modified amount of pendente lite interest. In other words, the appellants have paid court

fees only upon the difference obtained after calculating the interest at 18% and 12% per year. It is therefore obvious that the grant of pendente lite interest has not been challenged by the appellants in the memorandum of appeal nor leave of this Court has been sought by the appellants to raise the same inasmuch as the appellants have not even shown their willingness that they are ready and willing to pay the difference in the court fees which the appellants would be liable to pay in case the appellants wanted to challenge the grant of pendente lite interest by the learned Civil Judge. Even after the respondents had raised this objection, the appellants have chosen not to amend the memorandum of appeal or shown their willingness to pay the necessary court fees. Inspite of the appellants having had an opportunity to challenge the said grant of pendente lite interest by the learned Civil Judge, the appellants have chosen not to take any steps in that direction. In such a situation, in my opinion, there is no question of the appellants being allowed to challenge the said grant of pendente lite interest as purely a question of law or for that matter this Court in invoking suo motu power and correcting the judgment/decree of the learned Civil Judge since the appellants have chosen not to challenge the said award of pendente lite interest by the learned Civil Judge. The said award of pendente lite interest by the learned Civil Judge therefore should remain undisturbed.

28. Assuming I have erred in the above view of the matter, it is

desirable to consider whether the learned Civil Judge was entitled to award pendente lite interest to the respondents when the learned Arbitrator had declined to award the same. It is the contention of the respondents that the learned Civil Judge was justified in awarding the said pendente lite interest under Section 15(b) of the Act. The said section reads as follows :-

" 15. Power of Court to modify award. – The Court may by order modify or correct an award -

(a) . . .

(b) Where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or

© . . . "

29. On the other hand, the appellants contend that in terms of Section 29 of the Act the Civil Judge has no power to grant interest, including pendente lite interest, for the period prior to the date of the decree, when the Arbitrator has not granted the same. Section 29 of the Act reads as follows :-

" 29. Interest on awards -– where and insofar as an award is for payment of money the Court may in the decree, order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the Decree.

30. Shri Mascarenhas, the learned counsel for the respondents, submits that the modification of the award was prompted by a landmark change in the law that occurred between the date of making the award (31.10.91) and pronouncing of the judgment on 12.12.91 by the Hon'ble Supreme Court in the case of **G.C. Roy** (A.I.R. 1992 S.C., 732). Shri Mascarenhas contends that till then it was understood that an Arbitrator did not have“ power to grant pendente lite interest in the light of the judgment of the Hon'ble Supreme Court in the case of **Abhaduta Jena** (A.I.R. 1988 S.C., 1520) and therefore it was common knowledge that all awards which were being made after the judgment in Jena's case were made with an understanding that an Arbitrator was not legally competent to grant pendente lite interest. Shri Mascarenhas contends that after filing of the award before the learned Civil Judge, the respondents filed an application to have the said award amended by providing therein for pendente lite interest and also to increase the rate of interest. Shri Mascarenhas further contends that the Arbitrator was bound to give reasons for his award in the present case in terms of clause 25 of the Contract and since the learned Arbitrator had awarded pre-arbitration interest and post-award interest and had merely remained silent with respect of the pendente lite interest, the conclusion was irresistible that the Arbitrator had clearly intended to provide for interest from the date of the accrual of the cause of action till payment but held his hand with respect to the period pendente lite on account of the legal bar placed by the Supreme Court in the said case of **Abhaduta**

Jena (supra). Shri Mascarenhas contends that in case the Arbitrator intended to deny such interest on merits, he was bound to give reasons for such refusal and the context in which the award was made implies the contrary i.e. that the interest was not allowed because the Arbitrator understood that he was incompetent to allow the same for the period pendente lite. In support of his contentions, Shri Mascarenhas has placed reliance on the said case of **Pan Constructions v. State of Goa (supra), Laximikant V. Karmali v. State of Goa (Civil Appeal No.468/1992) M/s. Narain Das R. Irani v. Delhi Development** Authority (1996(1) Arb. LR.602) , **Santokh Singh v. Union of India (1992 (1) Arb. LR.168), and U.P. State _Electricity Board v. Shri Pateshwari Electricals (1999(1) Arb. L.R. 397).**

31. On the other hand, Shri Thali, learned Govt. Advocate for the appellants, contends that the power to grant interest and discretion to exercise that power are two different and independent aspects and the power available to an Arbitrator is not coupled with any mandate to invoke the same or to invoke it in any particular manner and whether to grant pendente lite interest or not was his discretion and it was not mandatory for him to grant the same. Shri Thali contends that this principle has been laid down in the case of **G.C. Roy (supra)** and accepted in the case of **State of Orissa v. B.N. Agarwalla** (1997 (2) S.C.C 469), the relevant portion of which reads as follows :-

" This does not mean that in every case the Arbitrator should

necessarily award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view. "

Shri Thali further contends that the power of the Civil Court to grant interest while making an award Rule of the Court flows from Section 29 of the Act and not from Section 34 C.P.C., and since section 29 of the Act enables the court to grant interest on the principal amount adjudged by the award and confirmed by the decree, only from the date of the decree, it carries a negative import with it that the Court has no power to grant interest pendente lite.

32. Shri Thali further contends that if the Arbitrator refuses to grant pendente lite interest on the misconception of law and making his misconception known in the award that he has no power to grant the same, then he would be committing an error of law apparent on the face of the award and in the case at hand there is no such misconception laboured by the Arbitrator nor there is any such reference in the award or anything to so suggest in the award. " Shri Thali next contends that it was not the case of the respondents nor pleaded by them that the Arbitrator did not grant pendente lite interest due to any misconception of law and as in the case of **Delcon Engineers** (CRA No.219/01 decided on 11.1.02) in the case at hand also the Arbitrator has not refused to grant pendente lite interest on any misconception of law that he had no power to grant the same. Shri Thali contends that it is quite possible for

an Arbitrator to grant further interest upon an Award and yet to refuse interest pendente lite. Shri Thali has placed reliance on the cases of **E.C.S. Ltd. v. Mining and Allied Machinery Corpn. Ltd.** (A.I.R. 1994 Calcutta 52), **Srikantia & Co. v. Union of India** (A.I.R. 1967 Bombay 347), **Ram Singh v. Ram Singh** (A.I.R. 1985 Raj. 148), **Union of India v. Jain Associates & Anr.** (1994 (4) S.C.C., 665), **Visakapatnam Municipal Corporation v. K. Satyanarayana & Co.** (1995 (2) S.C.C. 385), **United Commercial Corporation** (A.I.R. 1996 Orissa, 217) and **Arrandas Naraindas v. Narsingdas Naraindas Adnani** (A.I.R. 1997 Bombay, 20). Finally Shri Thali contends that the Court could have granted interest only from the date of the decree and not from the date of award.

33. In the case of **Pan Constructions** (supra) a Division Bench of this Court observed that since the Arbitrator had granted interest for the period prior to 4.10.89 and after the date of the award, there was no justification for non-granting interest for the earlier mentioned period unless the Arbitrator had given special reasons as to why he was not granting the interest and therefore the Bench proceeded to award pendente lite interest from 4.10.89 to 20.9.1990.

34. In the case of **Laximikant Karmali** (S.L.P. (Civil) 468/92) the Hon'ble Supreme Court referring to the case of **G.C. Roy** (supra) stated that the appellants would be entitled to pendente lite interest on

the amount and therefore proceeded to allow the appeal.

35. As rightly pointed out on behalf of the appellants by the learned Advocate Shri Thali, there is no proposition of law laid down in the said two decisions of this Court in the case of Pan Constructions (supra) and the Supreme Court in the case of **Laximikant Karmali**. What the Hon'ble Supreme Court does for the ends of justice in the facts and circumstances of a particular case cannot be taken to be any binding precedent. In the case of **Narayandas R. Israni** (1996(1) Arb.LR.602) the Arbitrator had made an award of interest only from the date of reference till the date of award, but did not allow future interest on the assumption that there is no such power to award interest beyond the date of award till the date of decree or date of payment, whichever is earlier, though this matter was specifically referred to him. Relying on the case of **G.C. Roy** (A.I.R. 1992 S.C. 7321) the High Court observed that there is now no manner of doubt that the Arbitrator is competent to award interest for the period commencing from the date of award till the date of decree or till realisation, whichever is earlier. The award of interest for the period prior to Arbitrator entering upon reference is a matter of substantive law and accordingly the interest for the post-award period is a matter of procedure. Section 34 of C.P.C. Provides awarding of interest pendente lite as well as post-decree period and Section 34 of C.P.C. has been held applicable to proceedings before the Arbitrator. In the light of the ratio of the said case of **G.C. Roy** the High Court modified

the award to the extent that in addition to the interest, which the Arbitrator had allowed, the claimant was held entitled to interest at the rate of 14% on Rs.95,694/- from the date of the award till the date of decree. It may be noted that as far as the case at hand is concerned, there is nothing to suggest that the Arbitrator was under misconception of law like the case of **Narayandas R. Israni** (supra).

36. In the case of **Santokh Singh Arora** (1992 (1) Arb.LR 681) the dispute was pending before two Arbitrators, namely L.K. Raisingani and S.A. Gupta and the learned Arbitrator had awarded interest at the rate of 12% per year for the period 21.11.1983, the date on which the dispute was referred to arbitration of Shri Justice A.C. Gupta till the date of the award made by the learned Arbitrator. In this context the Hon'ble Supreme Court, referring to the said case of G.C. Roy (supra) observed that:-

" This indicates that the learned Arbitrator wanted to award interest in respect of the period during which the matter was pending in arbitration before him and Shri Justice A.C. Gupta. Since interest was being allowed for the period during which the matter was pending in arbitration before Shri Justice A.C. Gupta and the learned Arbitrator, the interest should also have been allowed during the period during which the matter had been pending in arbitration ever since the Chief Engineer appointed Lt. Col. L.K. Rai Singani as the Arbitrator by Order dated 18.12.68 and the matter was pending before the said Arbitrator or his

successors or in the courts in connection with the proceedings arising out of the said arbitration." There is no such indication in this case and it is therefore obvious that the case of Santokh Singh Arora, on facts, is not applicable to the case at hand.

37. In the case of **U.P. State Electricity Board v. Shri Pateshwari Electricals** (supra) the question which had fallen for determination was whether the statutory Arbitrator had jurisdiction to award interest and the Hon'ble Supreme Court held that such an Arbitrator had no power to award interest, but proceeded to observe that even if the Arbitrator had no authority to award interest, they could in equity provide for the same and therefore the Hon'ble Supreme Court did not propose to interfere with the award on the award of interest. There is no proposition of law as such laid down in this case.

38. As seen from Section 15(b) of the Act, the learned Civil Judge could have modified or corrected an award only in case it was imperfect in form or contained any obvious error which could be amended without affecting such decision. In other words, the question was whether the learned Civil Judge could have corrected the award of not awarding pendente lite interest by himself awarding the same under Section 15(b) of the Act.? (emphasis supplied) .

39. The obvious answer had to be in the negative. Awarding

pendente lite interest, when it was not awarded by the Arbitrator certainly and substantially affects the decision of the Arbitrator. The case of **Naraindas L. Adnani** (supra) was a case of granting merely a consequential relief to make the award complete and effective without affecting the decision in the award and therefore in terms this case would not be of any assistance to the case of the respondents.

40. There is nothing in the award of the learned Arbitrator even to remotely suggest that he had not awarded pendente lite interest because he had no jurisdiction to award the same in view of the then existing law in the case of Abhaduta Jena (supra) and therefore it could not be said there was any error apparent on the face of the award which could have been corrected by the learned Civil Judge. In case the learned Arbitrator had made his misconception of law known in the award, that he had no power to grant the same, then in such a case the Arbitrator would have been committing an error of law apparent on the face of the award and it is only in such a case, the learned Civil Judge might have been in a position to correct the same as being an error apparent on the face of the award. The Supreme Court in the case of **Arosan Enteprises Ltd. v. Union of India** (1999 (9) S.C.C., 449) has stated that in the event of there being no reason in the award, question of interference of the Court would not arise at all, and, this principle has been again reiterated in the case of **Bharat Coking Coal Ltd. v. Annapurna Construction** (2003 (8) S.C.C. 154). In the case of **S.N. Srikantia & Co.** (supra) this Court

has held that a prayer for interest on the sum adjudged by the award for any period prior to the passing of the decree in terms of the award required to be rejected because under Section 29 of the Act the plaintiffs would be entitled to get interest on the sum adjudged by the award from the date of the decree and this principle has been approved by a Division Bench of this Court in the case of **Arjandas Adnani v. Narsingdas Naraindas Adnani & Ors.** (A.I.R. 1997 Bombay 20).

41. In the case of **Engineering Constructions Services L**td. (A.I.R. 1994 Calcutta 52) the Calcutta High Court observed that the dictum of the Supreme Court that grant of pendente lite interest is in the discretion of the Arbitrator, is, therefore primarily for the guidance of the Arbitrator himself and the Arbitrator is not allowed to refuse pendente lite interest under any misconception that he has no power to grant the same. If he were to do so by making his misconception known in the award then he would have committed an error apparent on the face of the award, but there was no suggestion that the learned Arbitrator was labouring under any erroneous impression that he had no power in law to grant pendente lite interest. But on the other hand the award was remitted because of restoration of the position in law that the Arbitrator had such power to grant interest pendente lite. The Court therefore observed that it is quite possible for an arbitrating body to grant further interest upon award and yet refuse interest pendente lite . Grant of such an award in one case and refusal to award in another do not

necessarily indicate any logical inconsistency or any error of law apparent on the face of the award.

42. In the case of **Union of India v. Jain Associates and anr.** (1994 (4) S.C.C., 665) the Hon'ble Supreme Court observed thus:-

" The first question that arises for consideration is whether the court could award interest pendente lite. Section 29 of the Act says that insofar as the award is for the payment of money, the Court may in the decree, order interest from the date of the decree at such rate as it deems reasonable, to be paid on the principal sum adjudged by the award and confirmed by the decree (emphasis supplied)."In S.N. Srikantia & Co. v. Union of India (A.I.R. 1967 Bombay 347) it was held that Section 29 carries with it the negative import that it shall not be permissible for the Court to award interest on the principal sum adjudged in the award for a peirod prior to the date of passing of the decree. The same principle was reiterated in **Ram Singh v. Ram Singh** (A.I.R. 1985 Rajasthan 148). Section 29 of the Act empowers the court that where the award is for payment of money, to grant reasonable rate of interest on the principal amount adjudged and confirmed in the decree, only from the date of decree. Section 34 C.P.C. empowers the court where there is a decree for payment of money to grant interest pendente lite and future till the date of realisation. Since Section 29 of the Act enables the Court to grant interest on the principal amount adjudged in the award and confirmed in the decree only from the date of

the decree, it carries a negative import with it that the Court has no power to grant interest pendente lite. The High Court therefore was not right in granting interest pendente lite which the Arbitrator himself had not granted. “

43. In the case of **State of Orissa and anr. v. United Commercial Co.** (A.I.R. 1996 Orissa 217) the Orissa High Court , referring to Section 29 of the Act stated that the same was exhaustive of the whole law upon subject of interest on award so far as the Civil Court is concerned and that the said section expressly makes provision for directing payment of interest on the principal sum adjudged by the award and confirmed by the decree from the date of the decree and it must be held that it carries a negative import to the effect that it shall not be permissible to the Court to award interest for a period anterior to the date of passing of the decree.

44. In the case of **Visakapatnam Municipal Corp. v. K. S. Co.** (1995 (2) S.C.C., 385) the Supreme Court has clearly held that any addition of the amount of interest which is specifically denied by the Arbitrators, is bound to affect the award in substantial measure. The Supreme Court, by implication, further held that the Court had no jurisdiction under Section 15(b) to grant pendente lite interest.

45. In the case of **Arjandas N. Adnani (A**.I.R. 1997 Bombay 20) a

Division Bench of this Court referred to the case of **Srikantia & Co.** (A.I.R. 1967 Bombay 347) and reiterated that Section 29 of the Act is exhaustive of the whole law upon the subject of interest on awards and since the said Section enabled the Court to award interest on the principal sum adjudged by an award from the date of decree onwards, it must be held it carries with it the negative import that it shall not be permissible to the Court to award interest on the principal sum adjudged by an award for any period prior to the date of passing of the decree. The Bench further concluded that the decision of the Supreme Court in **Union of India v. Jain Associates (**1994 SCW 2507: " 1994 (4) SCC 465 is a binding authority on the powers of the Court to award interest under Section 29 of the Act and following the same there is no escape from the conclusion that the court can award interest under Section 29 of the Arbitration Act, 1940 only from the date of the decree and not from the date of the award."

What follows from the above cases is that the power and discretion to grant pendente lite interest is that of the Arbitrator and in case an Arbitrator has not granted the same in his discretion, without disclosing any reasons, the same cannot be granted by the Court by correcting the award u/s 15(b) of the Act.

46. As rightly pointed out on behalf of the appellants, by learned Advocate Shri Thali, I am required to follow the judgments given in the case of **Jain Associates** (1994 (4) S.C.C. 665, **Visakapatnam**

Municipal Corporation (1995 (2) SCC 385) and **Arjandas N. Adnani** (A.I.R. 1997 Bombay 20) and hold that the judgment in the case of **Pan Constructions v. State of Goa** (supra) shall stand impliedly overruled though I have otherwise observed that it has not laid down any proposition of law as such. In the light of the said three judgments, in my opinion, the learned Civil Judge was not at all justified in awarding to the respondents pendente lite interest when the same was not awarded to them by the learned Arbitrator and there was no error apparent on the face of the record or any logical inconsistency which was required to be corrected by the learned Civil Judge. As such the appellants were bound to succeed, but, as I have already stated, the appellants have not at all challenged the grant of pendente lite interest to the respondents by the learned Civil Judge and therefore to that extent the Award shall remain modified as modified by the learned Civil Judge and the respondents would be entitled to pendente lite interest.

47. The third point to be considered is whether the respondents would be entitled to interest from the date of decree until payment ?

48. Shri Mascarenhas contends, on behalf of the respondents, that the judgment of the learned Civil Judge is not clear as to whether interest upon the awarded sum continues or not beyond the date of decree and as such they are interested to have the said judgment/order clarified in respect of the claim of interest from the date of decree till

payment. The respondents contend that they are making an oral request or application in that regard to this Court and that their oral application as far as their entitlement for post-decretal interest is concerned is squarely supported on all fours by the judgment of the Supreme Court in the case of **Jagdish Rai & Bros. v. Union of India** (1999 (1) Arb.LR. 696) which has been followed in the case of **T.P. George v. State of Kerala** (2001 (1) Arb.LR 490). It is the contention of the respondents that the ratio of the said case of **Jagdish Rai** is squarely applicable to the case at hand.

49. On the other hand, Shri Thali, on behalf of the appellants contends that the respondents have not challenged the impugned decree by filing any appeal or cross-objections and therefore the decree to the extent has not granted any interest from 18.9.95 has become final. The appellants have placed reliance on the case of **Bharat Coking Coal Ltd.** (2003 (8) SCC 154).

50. In the case of **Jagdish Rai** (supra), the Hon'ble Supreme Court observed that:-

"The High Court ought to have further examined whether the appellant was entitled to any interest after the decree was made in terms of the Award. The Courts have taken the view that award of interest under Section 34 of C.P.C. is a matter of procedure and ought to be

granted in all cases where there is a decree for money unless there are strong reasons to decline the same. In the present case the appellants had made a claim for interest before the Arbitratorbut the same had been denied and no reasons were forthcoming thereto. Whatever that may be, at any rate, after the Judge made an award the rule of the Court, the decree ought to contain a provision for making payment of interest. If such payment had not been made the appropriate correction of the decreeordered to be made when an application has been made before the High Court. . . . "

" We are conscious of the fact that the appellants had not preferred any appeal against the Order made by the Court of Sub-Judge which made the award the decree of the court, but did not grant any interest. Even so, the grant of interest being a matter of procedure and the appellant having made an application before the High Court in that regard, we do not think there is any impediment to grant the same by bringing the decree of the subordinate court in conformity with law namely by awarding appropriate interest."

51. In the case of **Bharat Coking Coal** Ltd. (supra) the Hon'ble Supreme Court observed as follows :-

" The submission of Mr. Sinha to the effect that the High Court committed an error in granting interest from the date of the decree

purported to be in terms of Section 29 of the Arbitration Act appears to be correct. The learned subordinate Judge did not grant any interest in terms of Section 29 of the Act. The same was not by way of clerical or arithmetical mistake which could be corrected by the Court in exercise of its power under Section 152 of C.P.C. The remedy of the respondents, therefore, was either to prefer an appeal or file a review petition. As the Court could not have exercised its jurisdiction under Section 152 C.P.C., the High Court in exercise of its revisional jurisdiction could not have interfered therewith."

52. I am of the opinion that the contention of the respondents that the ratio of the case of **Jagdish Rai** (supra) is squarely applicable to the present case has got to be rejected. In that case the said Jagdish Rai and Brothers had made no claim for interest before the court in which proceedings for making the award the rule of the Court were pending, but they did make an application in appeal filed by them before the High Court and it is in that situation, the Hon'ble Supreme Court observed that after the Sub-Judge made the award the Rule of the court, the decree ought to contain a provision for making payment of interest and if such payment was not made, appropriate correction of the decree could be ordered to be made when an application had been made before the High Court. In the case at hand the respondents by their said application dated 12.2.92 did pray for post-decretal interest which has not been granted to them by the learned Civil Judge. In other words, the

learned Civil Judge has refused to grant to the respondents any interest from the date of the decree. The respondents cannot be allowed to get any relief of post-decretal interest in an appeal filed by the appellants. The respondents ought to have filed either an appeal or cross-objections against the said Judgment/Award of the learned Civil Judge refusing to grant to the respondents post-decretal interest from 18.9.1995. This point therefore deserves to be decided against the respondents. The respondents are not entitled in this appeal to be awarded any post-decretal interest which has been refused to be awarded to them by the learned Civil Judge. The Respondents have not filed any appeal or cross-objections against the said refusal and therefore cannot be granted any reliefs in an appeal filed by the Appellants.

53. Lastly, the learned Arbitrator awarded to the respondents future interest at 12% on the amount of the award from the date of Award i.e. from 31.10.91 to the date of payment or decree whichever is earlier. This order of the learned Arbitrator is in conformity with the case of **State of Orissa v. B.N. Agarwalla** (1997 (1) Arb. LR. 612). The appellants contend that the respondents have not challenged the said judgment of the learned Civil Judge by filing any appeal or cross-objections for not granting interest from 31.10.91 onwards i.e. upto the date of the decree and therefore to the extent the decree does not grant any interest from 31.10.91 onwards, it has become final. On the other hand, the respondents contend that the order of the learned Civil Judge

does not modify the award for the period from the date of award (31.10.91) to the date of decree (18.9.95) and that they would be entitled to the said interest in terms of the law declared by the Hon'ble Supreme Court in the case of **State of Orissa v. B.N. Agarwalla** (1997 (1) Arb.LR 612) wherein the Supreme Court has stated as follows :-

" When the court does not modify the award with regard to grant of interest from the date of award upto the date of payment, the effect would be as if the court itself has granted interest from the date of the decree till the date of payment at the rate which was determined by the Arbitrator. The future interest would be regarded as having been ordered to be paid under Section 29 of the Arbitration Act when the court does not modify the award in this respect."

54. The respondents contend that in the course of modification made by the learned Civil Judge it has been directed that interest for the period pre-arbitration to be paid on the total sum of the award i.e. Rs.1,27,753.82 and not on the said claims No.1 and 5 (Rs.34,855 + Rs.9000) as directed in the award and since this issue has not been made a ground of attack in the present appeal, the order of the lower court is bound to be left undisturbed in that respect. The respondents also contend that the grant of pendente lite interest from 10.4.89 to 31.10.91 is not the subject matter of this appeal and therefore the same remains undisturbed.

If at all any clarification is required it is here. Since the award has not been modified for the period from 31.10.91 (date of award) to 18.9.95 (date of decree), the award is bound to carry interest at the rate of 12% for the said period on the sum awarded by the Arbitrator.

55. In the light of the above discussion, the appeal is bound to succeed, partly. Consequently the judgment/Award of the learned Civil Judge to the extent it has enhanced interest from 12% to 18% is hereby set aside and consequently the respondents are held entitled to interest at the rate of 12% only. The Judgment/Award as regards granting pendente lite interest remains undisturbed as there has been no challenge to the same in the present appeal. The respondents are held entitled to post-award interest at 12% on the sum of Rs.1,27,753.82 due on award of the learned Arbitrator. The respondents would not be entitled to post-decretal interest. Considering the facts there will be no order as to costs. Order accordingly.

N. A. BRITTO, J.

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